

A-Engrossed
Senate Bill 244

Ordered by the Senate February 11
Including Senate Amendments dated February 11

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Increases Oregon State Bar board of governors from 16 to 18 members. Allows board to establish special terms for positions that are shorter than four years for purpose of staggering terms of members.

Changes definition of person for purposes of laws governing unauthorized practice of law.

Repeals statutes relating to solicitation of personal injury business and referral of personal injury claims.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to Oregon State Bar; creating new provisions; amending ORS 3.428, 9.025, 9.160, 9.162, 9.527
3 and 9.990; repealing ORS 9.500, 9.505, 9.510, 9.515 and 9.520; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 9.025 is amended to read:

6 9.025. (1) The Oregon State Bar shall be governed by a board of governors consisting of [16] **18**
7 members. [Twelve] **Fourteen** of the members shall be active members of the Oregon State Bar, who
8 on appointment, on nomination, on election and during the full term for which the member was ap-
9 pointed or elected, maintain the principal office of law practice in the region of this state in which
10 the active members of the Oregon State Bar eligible to vote in the election at which the member
11 was elected maintain their principal offices. Four of the members shall be appointed by the board
12 of governors from among the public. They shall be residents of this state and shall not be active or
13 inactive members of the Oregon State Bar. No person charged with official duties under the execu-
14 tive and legislative departments of state government, including but not limited to elected officers
15 of state government, may serve on the board of governors. Any other person in the executive or
16 legislative department of state government who is otherwise qualified may serve on the board of
17 governors.

18 (2) For the purpose of eligibility for nomination and to vote in the election of a member of the
19 board of governors who is an elective member, and for appointment to the board of governors, the
20 State of Oregon shall be divided into regions determined by the board. The board shall establish
21 board regions that are based on the number of attorneys who have their principal offices in the re-
22 gion. To the extent that it is reasonably possible, the regions shall be configured by the board so
23 that the representation of board members to attorney population in each region is equal to the
24 representation provided in other regions. At least once every 10 years the board shall review the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 number of attorneys in the regions and shall alter or add regions as the board determines is ap-
2 propriate in seeking to attain the goal of equal representation.

3 (3) Members of the board of governors may be elected only by the active members of the Oregon
4 State Bar who maintain their principal offices in the regions established by the board. The **regular**
5 term of a member of the board is four years. **The board may establish special terms for positions**
6 **that are shorter than four years for the purpose of staggering the terms of members of the**
7 **board. The board must identify positions with special terms before accepting nominating pe-**
8 **titions for the positions.**

9 (4) No judge of a municipal, state or federal court or any other full-time judicial officer, shall
10 be eligible for appointment or election to the board of governors.

11 (5) The term of any member of the board of governors shall terminate on the date of the death
12 or resignation of the member, or if the member **of the board** is required to be a member of the
13 Oregon State Bar, the term terminates on the date:

14 (a) Of the termination of active membership in the Oregon State Bar [*by the member*] for any
15 reason;

16 (b) When the member discontinues to maintain the principal office of **law** practice in the region
17 in which it was maintained at the time of the appointment or election of the member; or

18 (c) When the member assumes office as a judge of a municipal, state or federal court, or fills a
19 full-time judicial office.

20 (6) No member of the board of governors shall be eligible, during the term of office, for service
21 pro tempore as a judge of any municipal, state or federal court.

22 **SECTION 2. The amendments to ORS 9.025 by section 1 of this 2009 Act become operative**
23 **January 1, 2010, except that the provisions for two new members of the board of governors**
24 **of the Oregon State Bar become operative on the effective date of this 2009 Act for the**
25 **purposes of nominating and electing the two new members to assume the duties of a member**
26 **of the board of governors on January 1, 2010.**

27 **SECTION 3.** ORS 9.162 is amended to read:

28 9.162. As used in ORS 9.160 to 9.166 and 9.280, unless the context or subject matter requires
29 otherwise:

30 (1) "Person" means a human being [*and where appropriate*], **a public body as defined by ORS**
31 **174.109**, a public or private corporation, an unincorporated association, a partnership, a [*government*
32 *or a governmental instrumentality*] **limited liability company or any other business entity created**
33 **under law.**

34 (2) "Restitution" means full, partial or nominal payment of pecuniary damages to a victim.

35 (3) "Victim" means any person who the court determines has suffered pecuniary damages as a
36 result of any other person's violation of ORS 9.160.

37 **SECTION 4.** ORS 9.160 is amended to read:

38 9.160. (1) Except as provided in this section, a person may not practice law **in this state**, or
39 represent that **the person [as] is** qualified to practice law **in this state**, unless [*that*] **the person is**
40 an active member of the Oregon State Bar.

41 (2) Subsection (1) of this section does not affect the right to prosecute or defend a cause in
42 person as provided in ORS 9.320.

43 (3) An individual licensed under ORS 696.022 acting in the scope of the individual's license to
44 arrange a real estate transaction, including the sale, purchase, exchange, option or lease coupled
45 with an option to purchase, lease for a term of one year or longer or rental of real property, is not

1 engaged in the practice of law **in this state** in violation of subsection (1) of this section.

2 (4) A title insurer authorized to do business in this state, a title insurance agent licensed under
3 the laws of this state or an escrow agent licensed under the laws of this state is not engaged in the
4 practice of law **in this state** in violation of subsection (1) of this section if, for the purposes of a
5 transaction in which the insurer or agent provides title insurance or escrow services, the insurer
6 or agent:

7 (a) Prepares any satisfaction, reconveyance, release, discharge, termination or cancellation of a
8 lien, encumbrance or obligation;

9 (b) Acts pursuant to the instructions of the principals to the transaction as scrivener to fill in
10 blanks in any document selected by the principals;

11 (c) Presents to the principals to the transaction for their selection any blank form prescribed
12 by statute, rule, ordinance or other law; or

13 (d) Presents to the principals to the transaction for their selection a blank form prepared or
14 approved by a lawyer licensed to practice law in this state for one or more of the following:

15 (A) A mortgage.

16 (B) A trust deed.

17 (C) A promissory note.

18 (D) An assignment of a mortgagee's interest under a mortgage.

19 (E) An assignment of a beneficial interest under a trust deed.

20 (F) An assignment of a seller's or buyer's interest under a land sale contract.

21 (G) A power of attorney.

22 (H) A subordination agreement.

23 (I) A memorandum of an instrument that is to be recorded in place of the instrument that is the
24 subject of the memorandum.

25 (5) In performing the services permitted in subsection (4) of this section, a title insurer, a title
26 insurance agent or an escrow agent may not draft, select or give advice regarding any real estate
27 document if those activities require the exercise of informed or trained discretion.

28 (6) The exemption provided by subsection (4) of this section does not apply to any acts relating
29 to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of
30 this section unless the escrow agent provides to the principals to the transaction a notice in at least
31 12-point type as follows:

32 _____
33
34 YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT
35 CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE
36 DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU
37 MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN
38 ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR
39 ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT
40 YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.
41 _____

42
43 (7) The exemption provided by subsection (4) of this section does not apply to any acts relating
44 to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of
45 this section for a real estate sale and purchase transaction in which all or part of the purchase price

1 consists of deferred payments by the buyer to the seller unless the escrow agent provides to the
2 principals to the transaction:

3 (a) A copy of any proposed instrument of conveyance between the buyer and seller to be used
4 in the transaction;

5 (b) A copy of any proposed deferred payment security instrument between the buyer and seller
6 to be used in the transaction; and

7 (c) A copy of any proposed promissory note or other evidence of indebtedness between the buyer
8 and seller to be used in the transaction.

9 (8) The notice and copies of documents that must be provided under subsections (6) and (7) of
10 this section must be delivered in the manner most likely to ensure receipt by the principals to the
11 transaction at least three days before completion of the transaction. If copies of documents have
12 been provided under subsection (7) of this section and are subsequently amended, copies of the
13 amended documents must be provided before completion of the transaction.

14 (9) Failure of any person to comply with the requirements of subsections (3) to (8) of this section
15 does not affect the validity of any transaction and may not be used as a basis to challenge any
16 transaction.

17 **SECTION 5.** ORS 3.428 is amended to read:

18 3.428. (1) A family law facilitation program may be established by the judges of the family court
19 department of a circuit court. If there is no family court department for the court, a family law fa-
20 cilitation program may be established for a circuit court by the presiding judge for the judicial dis-
21 trict. A family law facilitation program shall be designed to assist litigants in domestic relations or
22 other family court proceedings described in ORS 3.408. The program shall be developed in consul-
23 tation with the local family law advisory committee established for the judicial district under ORS
24 3.434. The program shall operate under the supervision of the family court department or, if there
25 is no family court department, under the supervision of the presiding judge for the judicial district.
26 Services under the program shall be provided by court personnel in facilities under the supervision
27 and control of the family court department or, if there is no family court department, under the
28 supervision and control of the presiding judge for the judicial district. The program may provide:

29 (a) Educational materials.

30 (b) Court forms.

31 (c) Assistance in completing forms.

32 (d) Information about court procedures.

33 (e) Referrals to agencies and resources that provide legal and other services to parents or
34 children.

35 (2) All materials, forms, instructions and referral lists provided through the program must be
36 approved by the family court department or, if there is no family court department, by the presiding
37 judge for the judicial district.

38 (3) Except for those fees authorized for forms under ORS 21.361, services provided through the
39 program shall be provided without charge.

40 (4) An employee or other person providing services to litigants through a family law facilitation
41 program as provided in this section is not engaged in the practice of law **in this state** for the
42 purposes of ORS 9.160.

43 (5) Except as provided in subsection (6) of this section, an employee or other person who as-
44 sisted litigants through a family law facilitation program may not, for a period of one year after
45 leaving the program, charge or collect any fee from a litigant for services relating to a matter that

1 was the subject of assistance under the program.

2 (6) The prohibition of subsection (5) of this section does not apply to persons admitted to the
3 practice of law in this state.

4 **SECTION 6. ORS 9.500, 9.505, 9.510, 9.515 and 9.520 are repealed.**

5 **SECTION 7.** ORS 9.527 is amended to read:

6 9.527. The Supreme Court may disbar, suspend or reprimand a member of the bar whenever,
7 upon proper proceedings for that purpose, it appears to the court that:

8 (1) The member has committed an act or carried on a course of conduct of such nature that, if
9 the member were applying for admission to the bar, the application should be denied;

10 (2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor
11 involving moral turpitude or a felony under the laws of this state, or is punishable by death or
12 imprisonment under the laws of the United States, in any of which cases the record of the conviction
13 shall be conclusive evidence;

14 (3) The member has willfully disobeyed an order of a court requiring the member to do or
15 forbear an act connected with the legal profession;

16 (4) The member is guilty of willful deceit or misconduct in the legal profession;

17 (5) The member is guilty of willful violation of any of the provisions of ORS 9.460 [*or 9.510*];

18 (6) The member is guilty of gross or repeated negligence or incompetence in the practice of law;
19 or

20 (7) The member has violated any of the provisions of the rules of professional conduct adopted
21 pursuant to ORS 9.490.

22 **SECTION 8.** ORS 9.990 is amended to read:

23 9.990. [(1)] Any person who violates ORS 9.160 shall be fined not more than \$500 or imprisoned
24 in the county jail for a period not to exceed six months, or both.

25 [(2) *Any person who violates any of the provisions of ORS 9.500 or 9.520 commits a Class A vio-*
26 *lation.*]

27 [(3) *Any person violating any of the provisions of ORS 9.505 shall, upon conviction, be fined not*
28 *more than \$1,000 or imprisoned in the county jail for a period not to exceed one year, or both.*]

29 **SECTION 9. This 2009 Act being necessary for the immediate preservation of the public**
30 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
31 **on its passage.**

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